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HOGAN & HARTSON LLP IP GROUP, COLUMBIA SQUARE 555 THIRTEENTH STREET, N.W. WASHINGTON, DC 20004			EXAMINER JARRETT, SCOTT L	
			ART UNIT 3623	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/775,265	Applicant(s) BLALOCK ET AL.	
	Examiner Scott L. Jarrett	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 65-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on March 16, 2006 and February 17, 2006 have been entered.

Applicant's amendment filed February 17, 2006 amended claims 65-102. Currently claims 65-102 are pending.

Response to Amendment

2. The Objection to the Title in the previous office action is withdrawn in response to Applicant's amendment to the title.

Response to Arguments

3. Applicant's arguments with respect to claims 65-102 have been considered but are moot in view of the new ground(s) of rejection.

It is noted that the applicant did not challenge the officially noticed facts cited in the previous office action(s) therefore those statements as presented are herein after

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prior art. Specifically it has been established that it was old and well known in the art at the time of the invention:

- to use Freight of All Kinds information (matrix) as part of the negotiation of transportation and to include any and all information necessary for the complete and concise execution of negotiations between buyers (shippers) and sellers (carriers);
- to provide (send, receive, etc.) order/shipment status information (i.e. order tracking/monitoring) thereby providing a convenient mechanism for users to track/monitor their order (progress, status, etc.);
- to provide customer specific catalogs (rate sheets, information, discounts, offers, etc.) thereby enabling businesses to offer selected/special rates, products or the like to specific/designated companies (trading partners);
- to have a user indicate that a winning bid has not been received, as users ultimately decide what constitutes a winning (acceptable) bid; and
- to terminate an auction when bid(s) reach a pre-determined threshold (level, price, rate, criteria, etc.) such as a pre-determined price (strike price, reserve price, minimum bid, etc.) thereby enabling users to set/defined acceptable auction/offer criteria.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 67, 73 and 93 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 67 the disclosure does not clearly define the phrase "appropriate shipping services." The phrase "*appropriate* shipping services" is very subjective and interpretations of the terms vary widely depending on the person practicing the invention thereby making the phrase vague and indefinite. The intended scope of such terminology is unclear thereby rendering the claims indefinite under U.S.C. 112 2nd paragraph.

Examiner interpreted the phrase to mean that any criteria and/or mechanism for selecting (choosing, identifying, reviewing, etc.) shipping services would be "appropriate" for the purposes of examination.

Regarding Claim 73, Claim 73 recites the limitations "associated with **said selected** buyer or seller" in 71. There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read "associated with a buyer or seller" for the purposes of examination.

Regarding Claim 93 the disclosure does not clearly define the phrase “acceptable rates.” The phrase “*acceptable* rates” is very subjective and interpretations of the terms vary widely depending on the person practicing the invention thereby making the phrase vague and indefinite. The intended scope of such terminology is unclear thereby rendering the claims indefinite under U.S.C. 112 2nd paragraph.

Examiner interpreted the phrase to mean that any criteria and/or mechanism for selecting (choosing, identifying, reviewing, etc.) identified services would be considered “acceptable” for the purposes of examination.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 65-66, 70, 86, 90, 93 and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caplice, Christopher, An optimization based bidding process: A new framework for shipper-carrier relationships (1996) in view of Atkinson et al., U.S. Patent Publication No. 2001/0021923.

Regarding Claims 65 and 86 Caplice teaches an electronic market (marketplace, exchange, portal, system, "electronic markets", "information exchange", etc.) for negotiating a transportation contract between buyers and sellers for one or more transportation lanes comprising (Abstract; Section 1.3.1 Procurement Model, Pages 30-31; Paragraphs 1-2 and 4-5, Page 73; Electronic Markets, Pages 73-75; Chapter 4 Auction Design for TL Bids, Page 93; Section 4.2 Fundamental Auction Concepts, Page 96; Sequential Auctions, Pages 114-115; Simultaneous Auctions, Page 115; Section 4.3.3 Number of Rounds: Single vs. Multiple, Pages 123-125; Chapter 6 Carrier Assignment Problem, Page 197; Section 6.4.4 Multiple Round Auctions, Pages 229-230; Figures Figure 1.5, 5.17; 6.1; Tables 4.4-4.6, 4.10):

- enabling users (buyers, sellers) to conduct auctions (buyer/seller auctions) for one or more transportation lanes/capacity wherein the auction initiator receives one or

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more bids (bids on the right to perform services, contract; Paragraphs 1-2, page 93; Figures 4.3-4.6; Tables 4.4-4.6), filters (sorts, ranks, orders, etc.; Paragraph 1, Page 118; Paragraphs 1-2, Page 213) the one or more bids for review, identifies (selects, chooses, etc.) winning bids based on the review, conditionally award one or more transportation lanes to winning bidders (conditional, combinatorial bids, bid re-negotiation; Pages 122, 128), and enables users, receiving an transportation lane award (winning bid, contract, etc.), to review, accept or reject the award (recall bid, bid withdrawal, re-negotiation, etc.; Paragraph 1, Page 127; Paragraphs 1-3, Page 128; Last Paragraph, Page 152);

- enabling sellers to post quoted rates (i.e. transaction catalogs, catalog) for the one or more transportation lanes that buyers may review quoted transportation lane rates (Electronic Markets, Pages 73-75);

- enabling buyers and sellers to communication with the system/subsystems comprising an electronic data interchange system (Last Paragraph, Page 30; Paragraphs 2, 4, Page 32);

- enabling buyers and sellers to interact through the system (Electronic Markets, Pages 73-75);

- enabling users to designate (select, choose, identify, etc.) other users (buyers, sellers, etc.) as preferred trading partners (users) wherein selected/particular quote rates and/or auctions can be optionally made available only to the preferred/selected trading partners (users, i.e. preferred trading partners/preferred catalog customers are provided with preferential access to one or more transaction catalogs, e.g. discounted

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shipping rates, specific auctions, etc.; carrier screening/selection; Paragraphs 4-5, Page 29; Last Paragraph, Page 30; Paragraphs 1-5, Page 31; Electronic Markets, Pages 73-75; Figure 1.5).

Caplice is silent on the architecture of the electronic market and subsequently does not expressly teach that the system/method comprises auction transaction, catalog transaction and/or communication subsystems as claimed.

Atkinson et al. teach an online system and method for conducting multiple level auctions comprising: several interconnected subsystems (systems, modules, code, servers, programs, etc.) including but not limited to auction, catalog (Paragraph 0008, 0010) and communication modules (Figures 1A-1B, 2-4) and databases in an analogous art of negotiations via multiple level auctions (competitive bidding) for the purposes of conducting multiple rounds of negotiation wherein each rounds are based on occurrences (events) in one or more previous rounds (Paragraphs 0013, 0074).

More generally Atkinson et al. teach rule-based system and method for conducting multiple level auctions/bidding for products and/or services comprising (electronic procurement, bidding in rounds, exchange marketplaces; Abstract; Paragraphs 0012-0014, 0074, 0078):

- enabling users to publish and review (search, browse) catalogs (Paragraphs 0008, 0010);
- supports multiple auction formats (Paragraph 0073);

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- rules-based (driven) multiple level (round) auctions (Paragraphs 0013, 0017, 0069, 0072; Figures 5-6);
- enabling users to conduct multiple round reverse auctions to support such things as request for proposals (Paragraphs 0040-0042, 0074; Figures 4-5)
- enabling users to identify, review, rank (filter, sort, order bids as well as select winning bids (Paragraphs 0042, 0045, 0060-0061, 0066; Figure 5, Elements 208-218)
- terminate auctions upon the identification of a winning bid or after a specified period of time (Paragraph 0066);
- enabling users to designate (select, choose, identify, etc.) other users (buyers, sellers, etc.) as preferred trading partners (users) wherein selected/particular quote rates and/or auctions can be optionally made available only to the preferred/selected trading partners (users, i.e. preferred trading partners/preferred catalog customers are provided with preferential access to one or more transaction catalogs, e.g. discounted shipping rates, specific auctions, etc.; "In another example, a large base of suppliers, which may be, for example, two hundred suppliers, would create a cumbersome electronic auction if all two hundred suppliers participated in that auction. Thus, it may be beneficial to have a simplified round of bidding following which only the best ranked bidders are allowed to move on to an interactive auction. In this example the two hundred bidders may submit bids in an offline auction round. The top bidders may then be allowed to participate in a second, online auction round. Thus, for example, the top ten percent, or twenty bidders in the example provided, in the first round auction may be

permitted to participate in the second online auction round.”, Paragraph 0074;
Paragraphs 0066-0068; Figures 5-6)

It would have been obvious to one skilled in the art at the time of the invention that the system and method for negotiating/bidding transportation services using multiple level auctions via electronic markets as taught by Caplice would have benefited from utilizing any of a plurality of well known system architectures including but not limited to well known Web-based system architectures in view of the teachings of Atkinson et al.; the resultant system and method enabling users to conduct multiple rounds of negotiation wherein each rounds are based on occurrences (events) in one or more previous rounds (Atkinson et al.: Paragraphs 0013, 0074).

Regarding Claim 66 Caplice teaches an electronic market (marketplace, exchange, system, etc.) further comprising enabling users to execute (sign, conclude, perform, finalize, etc.) shipping transactions negotiated via the system (Abstract; EDI, shipment tracking/tracing, etc., Pages 32 and 34; carrier assignment, load tendering; Chapter 6, Page 197; Figure 1.5).

Regarding Claim 70 Caplice teaches an electronic market wherein the system enables users to trace/track shipments as well as provides well-known EDI messaging capabilities (Paragraph 4, Page 32).

Caplice does not expressly teach that the system receives status update message regarding scheduled and in-transit shipments or enables users to review the status messages as claimed.

Official notice is taken that providing (sending, receiving, etc.) order/shipment status information (i.e. order tracking/monitoring) is old and very well known in the art for providing a convenient mechanism for users to track/monitor their order (progress, status, etc.).

It would have been obvious to one skilled in the art at the time of the invention that the transportation marketplace as taught by the combination of Caplice and Atkinson et al. would have benefited from sending/receiving a plurality of order/purchase status/progress information in view of the teachings of official notice; the resultant system enabling users to conveniently track/monitor their orders (e.g. receive status/update messages regarding scheduled and in transit shipments).

Regarding Claim 90 Caplice teaches an electronic market for negotiation transportation services wherein winning bids in the auctions are determined manually by an auction initiator at any time during the auction (Section 4.2 Fundamental Auction Concepts, Page 96; Pages 126-128).

Regarding Claims 93 and 95 Caplice teaches an electronic marketplace (exchange) wherein the published transaction catalogs (catalogs) comprising a description of transportation lanes quoted are made available by each seller to the buyers and associated fee rates for the transportation lanes (Electronic Markets, Page 74) wherein the buyer can identify services/rates by matching the quoted services using one or more of the following manners (Electronic Markets, Page 74):

- manually reviewing (browsing) the published catalogs for sellers of interest and manually identifying matching services;
- automatically identifying matching services by querying/searching one or more catalogs, reviewing and selecting one of the identified matches; *or* automatically identifying and selecting matching services.

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8. Claims 67-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caplice, Christopher, An optimization based bidding process: A new framework for shipper-carrier relationships (1996) in view of Atkinson et al., U.S. Patent Publication No. 2001/0021923 as applied to claims 65-66, 70, 86, 90, 93 and 95 above and further in view of Barni et al., U.S. Patent No. 6,064,981.

Regarding Claim 67 Caplice teaches an electronic market further comprising enabling buyers to identify shipping services for a shipment date and send electronic purchase orders to sellers associated with the shipping services (Electronic Markets, Pages 73-75).

While Caplice teaches the utilization of the well known Electronic Data Interchange (EDI) to connect buyers/sellers to the transportation market neither Caplice nor Atkinson et al. expressly teach *sending* electronic *purchase orders* to sellers associated with the shipping services as claimed.

Barni et al. teach enabling users user (buyer) to send electronic purchase orders (offers, bids, etc.) to the seller associated with the identified quote (Column 5, Lines 15-68; Column 6, Lines 1-18; Figures 4-5, 9, 11-12) enabling buyers to identify (search, find, locate, etc.) shipping (transportation, logistics, carrier, etc.) services (products, offers, quotes, etc.) from posted quotes (Column 5, Lines 15-68; Figures 4, 11) in an analogous art of negotiating transportation services for the purposes of enabling users

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to negotiate carrier rates via an online auction block (Abstract) and/or to evaluate and accept offers/bids/proposals in a "point-to-point" manner (Column 5, Lines 20-29).

More generally Barni et al. teach an Internet-based electronic market (portal, marketplace, network, etc.) for negotiating transportation services (contracts, agreements, capacity, etc.; e.g. negotiating contracts for one or more transportation lanes/regions/zones/routes) comprising (Abstract):

- enabling buyers and sellers to conduct auctions (e.g. schedule transportation services, capacity, place bids, etc.) via an auction subsystem (system, component, module, code, etc.; Column 1, Lines 9-20; Column 2, Lines 3-28; Figures 2-12);
- auctions include buyer and seller auctions (bids; Columns 6-7; Figures 7-12);
- enabling sellers to post (publish, upload) and buyers to view (access, download) quotes (rates, bids, catalogs, etc.) for one or more transportation services (lanes, routes, modes, etc.) lanes via a catalog subsystem (publishing, content; Column 2, Lines 3-28; Columns 6-7; Figures 2-12);
- enabling users to upload and download (accesses, transfers, receives, sends, etc.) quotes (rates, auction information, etc.) to/from a private computer network (system; Column 1, Lines 42-68; Column 2, Lines 3-28; Figures 4-12);
- enables auction initiators to accept or decline offers (tender offers, bids, etc.; Columns 6-7; Figures 5, 9, 12); and
- enabling buyers and sellers to communicate electronically via the system (e.g. post/review bids/auctions; Column 6, Lines 1-32; Column 7, Lines 38-54; Figures 2-12).

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Barni et al. further teach publishing transportation information (quote, rate, catalogs, etc.) catalogs comprising description of transportation lanes quotes/rates (Abstract; Figures 4, 8, 11) as well as enabling users (buyers) to identify (find, search, view, etc.) transportation quotes (rates, capacity, services, etc.) by matching the quotes (information) using at least one of (selected from the group consisting of; Abstract; Column 2, Lines 12-25; Column 5, Lines 15-35; Columns 6-7; Figures 4, 8 11):

- manually reviewing (browsing) the published catalogs for sellers of interest and manually identifying matching services;
- automatically identifying matching services by querying/searching one or more catalogs, reviewing and selecting one of the identified matches; *or*
- automatically identifying and selecting matching services.

It would have been obvious to one skilled in the art at the time of the invention that the electronic market for negotiating transportation services (lanes, capacity, etc.) as taught by the combination of Caplice and Atkinson et al. with its utilization of well known Internet and EDI standards would have benefited from sending electronic purchase orders to sellers associated with the shipping services in view of the teachings of Barni et al.; the resultant system/method enabling users to negotiate carrier rates via an online auction block (Abstract) and/or to evaluate and accept offers/bids/proposals in a "point-to-point" manner (Barni et al.: Column 5, Lines 20-29).

Regarding Claim 68 Caplice does not expressly automatically sending electronic tender offers (i.e. winning bid) to the auction initiator detailing winning bids and associated bidders as claimed.

Barni et al. teach automatically sending electronic offers (tender offers, bid acceptance, etc.) to auction initiator detailing the winning bids/bidders (Column 6, Lines 14-17; Column 7, Lines 4-11 and 38-53) as well as enabling a auction initiator (originator, facilitator, buyer, seller, etc.) to identify winning bids (Columns 6-7; Figures 2-12) in an analogous art of negotiating transportation services for the purposes of providing confirmation of the accepted bid/offer (Column 6, Lines 10-18).

It would have been obvious to one skilled in the art at the time of the invention that the electronic market for negotiating transportation services (lanes, capacity, etc.) as taught by the combination of Caplice and Atkinson et al. would have benefited from automatically electronic offers (tender offers, bid acceptance, etc.) to auction initiator detailing the winning bids/bidders in view of the teachings of Barni et al.; the resultant system/method providing confirmation of the accepted bid/offer (Barni et al.: Column 6, Lines 10-18).

Regarding Claim 69 Caplice teaches an electronic market wherein the auction initiator can electronically accept or decline the electronic tend offer (i.e. winning bid;

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withdrawal rules, recall bid, bid withdrawal, re-negotiation, etc.; Paragraph 1, Page 127; Paragraphs 1-3, Page 128; Last Paragraph, Page 152).

Regarding Claim 71 Caplice teaches an electronic market further comprising initiating commands (messages, function calls, etc.) to a remote private network of a user (system), by the system, in response to certain status update messages (inherent in the systems/market's utilization of/support for EDI; Last Paragraph, Page 30; Paragraphs 2, 4, Page 32).

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9. Claims 72-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caplice, Christopher, An optimization based bidding process: A new framework for shipper-carrier relationships (1996) in view of Atkinson et al., U.S. Patent Publication No. 2001/0021923 in view of Barni et al., U.S. Patent No. 6,064,981 as applied to claims 65-71 above, and further in view of Sheehan et al., U.S. Patent Publication No. 2001/0049647.

Regarding Claim 72 while Caplice teaches the utilization of well-known EDI standards neither Caplice, Atkinson et al. nor Barni et al. expressly teach an electronic market wherein the commands trigger accounting transactions related to the scheduled and in transit shipments as claimed.

Sheehan et al. teach that initiated commands *trigger* account (financial) transactions regarding the orders/negotiations (purchasing, payment, settlement) in an analogous art of auction systems and method for the purposes of synchronizing purchase-order fulfillment activities (Paragraphs 0021, 0025).

More generally Sheehan et al. teach an Internet-based multilevel private and public auction marketplace wherein:

- users conduct staged (multilevel) auctions that can progress from private (auctions restricted to preferred trading partners) to public auctions based on one or more auction rules/criteria (Paragraphs 0018-0019, 0026-0027, 0030, 0033, 0035);

- integrating/synchronizing with purchase-order fulfillment systems (Paragraphs 0021, 0025; Figure 1, Element 114) to automatically generate purchase orders and other fulfillment related documents/messages;

- generating and sending offers (tender offers, bids, etc.) and purchase orders to sellers electronically (via an electronic data interchange, network, email, etc.; Paragraphs 0021, 0025);

- notifying users, via email, of auction status/progress (Paragraph 0020);

- allowing users (buyers, sellers, etc.) to designate (select, invite, etc.) other users as preferred trading partners (Paragraphs 0009, 0016, 0019; Figure 1, Element 110) wherein certain auctions are made available (rates, quotes, etc.; Paragraphs 0009, 0018-0019, 0027) only to preferred users (i.e. preferential access; "pre-register and pre-qualify one another so that surplus merchandise can find a quick and ready market", Paragraph 0008) as well as enabling designated users to participate in (bid) non-public (private, limited, restricted, etc.) and public auctions while non-preferred users/trading partners can only bid in public auctions;

- wherein users differ for each level (round, stage) of the multilevel private auction (Paragraphs 0023-0027);

- initiated commands *trigger* account (financial) transactions regarding the orders/negotiations (purchasing, payment, settlement) in an analogous art of auction systems and method for the purposes of synchronizing purchase-order fulfillment activities (Paragraphs 0021, 0025); and

- wherein the system is web/Internet based (Internet communication, electronic mail, web pages, interactive web site, etc.; Abstract; Column 1, Lines 23-68; Column 3, Lines 13-65; Figures 1, 4).

It would have been obvious to one skilled in the art at the time of the invention that the transportation marketplace system and method as taught by the combination of Caplice and Atkinson et al. would have benefited from integrating with the participants purchasing, logistics and other enterprise systems in view of the teachings of Shehan et al.; the resultant system synchronizing/integrating information related to the negotiated orders (e.g. scheduled and in transit shipments; Sheehan et al.: Paragraphs 0021, 0025-0026).

Regarding Claim 73 neither Caplice nor Atkinson et al. expressly teach sending email messages sent to users associated with a user wherein the email comprises status information relevant to users based on their assigned roles as claimed.

Barni et al. teach transportation marketplace wherein the initiated command comprise email messages sent individuals associated with the selected user (buyer, seller) and contain status information based upon the role of the individual receiving the message (Column 6, Lines 14-17; Column 7, Lines 4-11 and 38-53) in an analogous art of negotiating products/services for the purposes of providing confirmation of the accepted bid/offer (Column 6, Lines 10-18).

It would have been obvious to one skilled in the art at the time of the invention that the electronic market for negotiating transportation services as taught by the combination of Caplice and Atkinson et al. would have benefited from sending email messages sent to users associated with a user wherein the email comprises status information relevant to users based on their assigned roles in view of the teachings of Barni et al.; the resultant system/method providing confirmation of the accepted bid/offer (Barni et al.: Column 6, Lines 10-18).

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10. Claims 74-85, 92 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caplice, Christopher, An optimization based bidding process: A new framework for shipper-carrier relationships (1996) in view of Atkinson et al. as applied to claim 65-66, 70, 86, 90, 93 and 95 above and further in view of Sheehan et al., U.S. Patent Publication No. 2001/0049647.

Regarding Claims 74 and 87 Caplice does not expressly teach an electronic market further comprising users designated as preferred trading partners to bid in non-public and public auctions (buyer/seller auctions) while users not designated as preferred trading partners can only bid/participate in public auctions.

Sheehan et al. teach enabling users to designate other users as preferred trading partners (suppliers, users, pre-qualified, etc.) as well as subsequently enabling designated users to participate in (bid) non-public (private, limited, restricted, etc.) and public auctions while non-preferred users/trading partners can only bid in public auctions, in an analogous art of auction systems and methods for the purposes of facilitating pricing discovery and/or higher returns (Paragraphs 0023-0027).

It would have been obvious to one skilled in the art at the time of the invention that the transportation marketplace system and method as taught by the combination of Caplice and Atkinson et al. would have benefited from enabling users to designate preferred trading partners as part of a multilevel (round, tier, session, etc.) auction

system in view of the teachings of Sheehan et al., the resultant system enabling users to conduct private and/or public negotiations/auctions with preferred (e.g. pre-registered, pre-qualified, selected, etc.) trading partners (Sheehan et al.: Paragraphs 0008-0009) as well as facilitating pricing discovery and/or higher returns by expanding the number of buyers and/or merchandise (Sheehan et al.: Paragraph 0027).

Regarding Claim 75 neither Caplice nor Atkinson et al. expressly teach an electronic market wherein an auction initiator may hold/conduct a multi-level (stage, round, etc.) auction wherein a first level/round begins as a non-public auction and a final level completes the auction as a public auction as claimed.

Sheehan et al. teach a multilevel auction wherein the last level of the multilevel private auction is open (available, transformed, etc.) to all users (public), in an analogous art of auction systems and methods for the purposes of enabling designated users special access to goods/services prior to "opening" up the auction to the public/all users (Paragraphs 0009, 0018, 0023-27, 0033, 0035).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for bidding and negotiation transportation services as taught by the combination of Caplice and Atkinson et al. would have benefited from enabling users to conduct multilevel auctions wherein the last level of the multiple level auction is opened to all users (buyers/sellers) in view of the teachings of Sheehan et al.;

the resultant system enabling auction initiators to allow preferred users special/preferential access to auctions (pre-auctions; Sheehan et al.: Paragraphs 0009, 0018, 0027).

Regarding Claims 76 and 89 neither Caplice nor Atkinson et al. expressly teach that the preferred trading partners differ for each level of the multi-level non-public auction as claimed.

Sheehan et al. teach enabling the auction initiator to conduct a private multilevel auction wherein the preferred trading partners differ for each level (round, stage) of the private auction, in an analogous art of auction system and methods for the purposes of facilitating pricing discovery and/or higher returns (Paragraphs 0023-0027).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for bidding and negotiation transportation services as taught by the combination of Caplice and Atkinson et al. would have benefited from enabling users to designate preferred trading partners for each level of a multilevel (round, tier, session, etc.) auction system in view of the teachings of Sheehan et al., the resultant system enabling users to conduct negotiations/auctions with preferred (e.g. pre-registered, pre-qualified, selected, etc.) trading partners (Sheehan et al.: Paragraphs 0008-0009) as well as facilitating pricing discovery and/or higher returns (Sheehan et al.: Paragraph 0027).

Regarding Claims 77 and 88 neither Caplice nor Atkinson et al. teach an electronic market wherein the auction initiator has the option of transforming (converting, changing, etc.) the non-public auction into a public auction if the preferred trading partners submit no winning bid as claimed.

Sheehan et al. teach that the auction initiator (creator) can (optionally) transform (convert, change, etc.) the private auction to a public auction if the preferred trading partners submit no winning bid (Paragraphs 0018, 0023-0027) in an analogous art of auction systems and methods for the purposes of facilitating pricing discovery and/or higher returns (Paragraph 0027).

It would have been obvious to one skilled in the art at the time of the invention that the transportation marketplace system and method as taught by the combination of Caplice and Atkinson et al. would have benefited from providing users with a multilevel (stage) auction capability wherein proceeding auction rounds/levels successively "open up" the auction to a wider/larger number of participants based on one or more criteria, such as no winning bid received, in view of the teachings of Sheehan et al.; the resultant system facilitating pricing discovery and/or higher returns (Sheehan et al.: Paragraph 0027).

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Regarding Claims 78-79 Caplice teach an electronic market further comprising a web (Internet, World Wide Web) platform (system, subsystem, component, technologies, etc.), which provides an interactive web site that enables users to access the system over the Internet (Electronic Markets, Pages 73-75).

Caplice does not expressly teach that the web platform enables users to securely access the system over the Internet as claimed.

Official notice is taken that enabling users to securely access an online (web based) system over the Internet is old and very well known for providing a mechanism for controlling access to one or more systems to desired/required users (e.g. private extranets).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for bidding and contracting transportation services using multiple level auctions as taught by the combination of Caplice and Atkinson et al. would have benefited from enabling users to securely access an online (web based) system over the Internet in view of the teachings of official notice; the resultant system/method enabling users to securely conduct online transportation negotiations.

Regarding Claim 80 Caplice teaches an electronic market wherein the system provides scheduled/in transit shipment tracking and tracing information to users (shipment tracking/tracing, EDI; Paragraph 4, Page 32).

Regarding Claim 81 Caplice teaches an electronic market wherein the electronic data interchange system/subsystem enables communication with users' private computer networks (inherent in the systems utilization/support of EDI; Last Paragraph, Page 30; Paragraph 4, Page 32).

Regarding Claim 82-83 Caplice teach an electronic market for negotiating transportation contracts wherein the system uploads quoted rates for one or more transportation lanes from at least one seller as well as downloads quoted rates to one or more buyers (buyer's systems, networks, etc.; Electronic Markets – Page 74)

Regarding Claims 84, 91 and 94 Caplice does not expressly teach sending, as appropriate, generated tender offers and purchase orders to sellers/auction initiators/buyers.

Sheehan et al. teach generating and sending offers (tender offers, bids, etc.) and purchase orders to sellers electronically (via an electronic data interchange, network, email, etc.), for the purposes of synchronizing auction transactions with other company purchasing, logistics and/or other enterprise systems (Paragraphs 0021, 0025).

It would have been obvious to one skilled in the art at the time of the invention that the transportation marketplace system and method as taught by the combination of Caplice and Atkinson et al. would have benefited from interacting with a plurality of external systems including but not limited to billing/accounting (purchasing) systems in view of the teachings of Sheehan et al.; the resultant system synchronizing auction transactions with other company purchasing and/or logistic systems (Sheehan et al.: Paragraphs 0021, 0025).

Regarding Claim 85 Caplice does not expressly teach that the system interacts with user's billing and messaging systems/subsystems as claimed.

Sheehan et al. teach integrating (linking, interacting, synchronizing) with external systems in an analogous art of auction systems and methods for the purposes of synchronizing auction transactions with other company purchasing and/or logistic systems (Paragraphs 0021, 0025).

It would have been obvious to one skilled in the art at the time of the invention that the transportation marketplace system and method as taught by the combination of Caplice and Atkinson et al. would have benefited from interacting with a plurality of external systems including but not limited to billing/accounting (purchasing) systems in view of the teachings of Sheehan et al.; the resultant system synchronizing auction

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transactions with other company purchasing and/or logistic systems (Sheehan et al.: Paragraphs 0021, 0025).

Regarding Claim 92 Caplice does not expressly teach enabling users (sellers, buyers, to publish one or more preferred customer catalogs that are accessible only to other designated users as claimed.

Official notice is taken that providing customer specific catalogs (rate sheets, information, discounts, offers, etc.) is old and very well known in the art and provides a mechanism for businesses to offer selected/special rates, products or the like to specific/designated companies (trading partners).

It would have been obvious to one skilled in the art at the time of the invention that the transportation marketplace system and method as taught by the combination of Caplice and Atkinson et al. would have benefited from providing customer-specific rates/discounts (e.g. customer specific catalogs containing customer-specific products, services, etc.) in view of the teachings of official notice; the resultant system enabling businesses to offer selected/special rates/services to designated customers.

11. Claims 96-99 and 101-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Federal Communication Commission - Auction 17 - Auction Procedures, Terms and Conditions (1997), herein after FCC Auction, in view of Caplice, Christopher, An optimization based bidding process: A new framework for shipper-carrier relationships (1996).

Regarding Claim 96 FCC Auction teaches a system and method for conducting a multiple level non-public auction in a market among a plurality of buyers/sellers comprising (E. Electronic Bidding Software, Page 22/102; (4) Auction Stages, Pages 24-25/104-105; B. Bidding Procedures, Pages 26/106; (5) Bidding, Pages 28-29/108-109; (7) Round Results, Page 30/110):

- multiple-level (stage, round, phases, etc.) auction format wherein the levels are arranged from a first to a last level (Paragraph 1, Page 12; (4) Auction Stages, Pages 24-25/104-105);

- defining auction parameters including acceptable bids, one or more service (frequency spectrums/markets/bands) and the designation of certain users as preferred trading partners wherein only preferred trading partners can bid/participate in any one level of the multiple level non-public auction (Section 2 Bidder Eligibility, Pages 15-17/95-97; Auction Registration, Pages 21-22/101-102; A. Auction Structure, Pages 23-25/103-105);

- starting the first auction level and then for each subsequent level in the multiple level non-public auction ((4) Auction Stages, Pages 24-25/104-105; B. Bidding

Procedures, Pages 26/106; (5) Bidding, Pages 28-29/108-109; (7) Round Results, Page 30/110):

- publishing notice (alert, advertise, announce, etc.) to preferred (qualified, admitted, participating, etc.) trading partners ((4) Auction Stages, Pages 24-25/104-105; (8) Auction Announcements, Page 30/110);

- receiving, filtering/monitoring/reviewing and identifying a winning bid from the received bids from the preferred trading partners ((4) Auction Stages, Pages 24-25/104-105);

- awarding a service/contract to a winning bid, if identified ((7) Round Results, Page 30/110; 5. Post-Auction Procedures, Pages 30-31/110-111); and

- allowing a winning bid to be review and accepted or rejected ((6) Bid Withdrawal and Removal, Pages 29-30/109-110);

- proceeding to the next level of the non-public auction, if an indication is received that no winning bid as been identified and/or accepted ((4) Auction Stages, Pages 24-25/104-105; B. Bidding Procedures, Pages 26/106; (5) Bidding, Pages 28-29/108-109; (7) Round Results, Page 30/110).

FCC Auction does not expressly teach that the intended field of use for the multiple level non-public auctions is for auctioning transportation services (lanes, capacity, etc.) as claimed.

Caplice teaches the use of multiple level (stage, phase, round, etc.) auctions for bidding, auctioning and/or negotiating transportation lanes (capacity, services; Abstract; Figure 1.5; Section 1.3.1 Procurement Model, Pages 30-31; Paragraphs 1-2 and 4-5, Page 73; Chapter 4 Auction Design for TL Bids, Page 93; Section 4.2 Fundamental Auction Concepts, Page 96; Sequential Auctions, Pages 114-115; Simultaneous Auctions, Page 115; Section 4.3.3 Number of Rounds: Single vs. Multiple, Pages 123-125; Chapter 6 Carrier Assignment Problem, Page 197; Section 6.4.4 Multiple Round Auctions, Pages 229-230; Figure 5.17; 6.1; Tables 4.4-4.6, 4.10) in an analogous art of auction market systems for the purposes of enabling users to effectively procure transportation services and assign carriers to lanes (i.e. bid and contract transportation lanes; Abstract, Paragraph 1, Page 30).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for conducting multiple level non-public auctions in a market as taught by FCC Auction would have utilized to conduct auctions in a plurality of markets/for a plurality of products/services including but not limited to the auctioning of transportation services (lanes, capacity, etc.) in view of the teachings of Caplice; the resultant system/method enabling users to effectively procure transportation services and assign carriers to lanes (Caplice: Abstract, Paragraph 1, Page 30).

Regarding Claims 97-98 FCC Auction teaches a system and method for conducting multiple level auctions wherein the indication that no winning bid has been

identified comprises a manual instruction and/or is automatically given after the expiration of a set period of time in which bids are received/monitored ((6) Auction Stopping Rules, Page 25/105).

Regarding Claim 99 FCC Auction teaches a system and method for conducting multiple level auctions wherein the winning bid must meet a pre-determined price wherein the received bid and price comprise an instructions that adjust/revise the remaining levels ((2) Minimum Opening Bid/Reserve Prices, Page 26/106; (3) Minimum Acceptable Bids, Pages 26-27/106-107).

FCC Auction does not expressly teach terminating an auction without proceeding to any remaining levels when pre-determined price is met as claimed.

Official notice is taken that terminating an auction when bid(s) reach a pre-determined threshold (level, price, rate, criteria, etc.) such as a pre-determined price (strike price, reserve price, minimum bid, etc.) is old and very well known for enabling users to set/defined acceptable auction/offer criteria.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for conducting a multiple level non-public auction for transportation services as taught by the combination of FCC Auction and Caplice would have utilized a plurality of well known auction methods (techniques, types, approaches,

etc.) including enabling users to set a pre-determined price (strike price) such that bids meeting this price are accepted and thereby terminate the auction without the need to conduct any further auction levels in view of the teachings of official notice; the resultant system enabling users to define/set acceptable auction/offer criteria.

Regarding Claim 101 FCC teaches designating/identifying/selecting qualified (preferred, selected, registered, etc.) trading partners (bidders, auction participants, users) for each level of the multiple level auction wherein the previous auction rounds determine/influence which users can participate (are qualified) in subsequent rounds (A. Auction Structure; Page 23/103; (4) Auction Stages, Pages 24-25/104-105).

Regarding Claim 102 FCC Auction teaches a system and method for conducting multiple level auctions wherein the auction is terminated upon the identification of a winning bid and a tender offer (message, notice, auction results, etc.) regarding the bid is sent ((8) Auction Announcements, Page 30/110; 5. Post-Auction Procedures, Pages 30-31/110-111).

12. Claim 100 is rejected under 35 U.S.C. 103(a) as being unpatentable over Federal Communication Commission - Auction 17 - Auction Procedures, Terms and Conditions (1997), herein after FCC Auction, in view of Caplice, Christopher, An optimization based bidding process: A new framework for shipper-carrier relationships (1996) as applied to claims 96-99 and 102 above, and further in view of Sheehan et al., U.S. Patent Publication No. 2001/0049647.

Regarding Claim 100 FCC Auction does not expressly teach that the intended field of use for the multiple level non-public auctions is utilized for auctioning transportation lanes/capacity/services as claimed.

Caplice teaches the use of multiple level (stage, phase, round, etc.) auctions for bidding, auctioning and/or negotiating transportation lanes (capacity, services; Abstract; Figure 1.5; Section 1.3.1 Procurement Model, Pages 30-31; Paragraphs 1-2 and 4-5, Page 73; Chapter 4 Auction Design for TL Bids, Page 93; Section 4.2 Fundamental Auction Concepts, Page 96; Sequential Auctions, Pages 114-115; Simultaneous Auctions, Page 115; Section 4.3.3 Number of Rounds: Single vs. Multiple, Pages 123-125; Chapter 6 Carrier Assignment Problem, Page 197; Section 6.4.4 Multiple Round Auctions, Pages 229-230; Figure 5.17; 6.1; Tables 4.4-4.6, 4.10) in an analogous art of auction market systems for the purposes of enabling users to effectively procure transportation services and assign carriers to lanes (i.e. bid and contract transportation lanes; Abstract, Paragraph 1, Page 30).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for conducting multiple level non-public auctions in a market as taught by FCC Auction would have utilized to conduct auctions in a plurality of markets/for a plurality of products/services including but not limited to the auctioning of transportation services (lanes, capacity, etc.) in view of the teachings of Caplice; the resultant system/method enabling users to effectively procure transportation services and assign carriers to lanes (Caplice: Abstract, Paragraph 1, Page 30).

Neither FCC Auction nor Caplice expressly teach that the last level of a multiple level auction is opened to all buyers and sellers as claimed.

Sheehan et al. teach a multilevel auction wherein the last level of the multilevel private auction is open (available, transformed, etc.) to all users (public), in an analogous art of auction systems and methods for the purposes of enabling designated users special access to goods/services prior to "opening" up the auction to the public/all users (Paragraphs 0009, 0018, 0023-27, 0033, 0035).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for bidding and negotiation transportation services as taught by the combination of FCC Auction and Caplice would have benefited from enabling users to conduct multilevel auctions wherein the last level of the multiple level

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auction is opened to all users (buyers/sellers) in view of the teachings of Sheehan et al.; the resultant system enabling auction initiators to allow preferred users special/preferential access to auctions (pre-auctions; Sheehan et al.: Paragraphs 0009, 0018, 0027).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Hunt et al., U.S. Patent No. 5,835,716, teach an electronic market for negotiating transportation services (brokering excess carrier capacity).
- Fisher et al., U.S. Patent No. 5,835,896, teach an online auction system and method wherein the system/method closes the auction from further bidding, when appropriate, and notifies the winning bidder and losers as to the auction outcome.
- Conklin et al., U.S. Patent No. 6,141,653, teach an system and method for iterative (multiple round) multivariate negotiations wherein users designate selected trading partner (private marketplace), negotiate contracts (e.g. RFPs, RFQs), generate and send purchase orders, search, review, select and rank suppliers, utilize electronic data interchange (EDI), execute payments and multiple level security/access control.
- Gujral et al., U.S. Patent Publication No. 2002/0042769, teach an online system and method for negotiating services via competitive bidding (auctions).
- Borgeson et al., U.S. Patent Publication No. 2003/0236739, teach an online electronic market for negotiating transportation services comprising auctions.
- Samuleson, William, Bidding for Contracts (1986), teaches the old and very well-known use of competitive bidding (auction sales, contract procurements) methods/systems for the public and/or private allocation of resources, specifically the bidding and awarding contracts (contingent contracts), wherein users submit, review, rank competitive bids as well as select/award contracts.

- Beilock et al., Brokerage and the potential for electronic marketing of produce transportation (1992) teach an electronic market for negotiating transportation services ("First a system could be developed that reduced the need for intermediaries in product transportation. Similar to electronic banking, which reduces the need for tellers, such a system could allow shipper/receivers and carriers to identify opportunities for matching carriers and shippers/receives and possibly to negotiate freight rates via computers.") as well as the old and very well known utilization of brokers/brokerages to negotiate transportation services (e.g. DAT, Comdata Transportation Services).

- Putzger, Ian, Auction offered for online cargo rate bookings (1999) teaches commercial electronic market systems and methods for negotiating transportation services (www.freightgate.com, www.gf-x.com) wherein the systems/method comprise: shippers browsing online catalogs of offers, online booking/reservations, shipment tracking, auctions and the like.

- Descartes Announces Collaborative Logistics Exchange (1999) teaches a commercially available electronic marketplace for the negotiation of transportation services (Collaborative Logistics Exchange) wherein "Shippers, carriers and forwarders finally have a system that will allow them to easily broadcast available transportation equipment capacities and shipment requirements across a trading partner community."

Descartes further teaches "With CLE, an airline, ocean carrier or trucker will be able to notify its trading partners of excess capacity and create a frictionless marketplace that enables spot bids or real-time bartering of prices and service agreements....unlike public load posting services and freight exchanges, CLE is

designed to allow each trading partner to manage its own trading partner communities, enabling a personalized trading exchange with its key suppliers and customers via the Internet.”

- Value-net and Bid Freight Launch Online Auction for Transportation Industry (1999) teaches an online electronic market for negotiating transportation services, which replaces the traditional role of transportation brokers/brokerages, wherein the system/method includes “automated shipment tendering, bidding, negotiation, scheduling, delivery notification, secure payment processing, interactive marketing and electronic commerce initiatives.” The article further teaches a system and method for providing online auctions as well as transportation catalogs as part of the transportation exchange.

- A list of online transportation services (2000) teaches a plurality of online electronic market systems and methods for negotiating transportation services.

- Putzger, Ian, e-booking (2000) teaches several electronic transportation market systems and methods wherein the systems/methods include online auctions for transportation services.

- Live Wired Logistics (2000) teaches a plurality of well known electronic marketplace (exchange) models, systems and methods for the negotiation of transportation services.

- Banfield, Emiko, Harnessing Value in the Supply Chain (1999) teaches in detail well known strategic sourcing techniques/methods for identifying and negotiating services wherein users/business start with an initial list of suppliers which through

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various rounds and mechanism is reduced to a smaller list of request for proposal candidates, then to a short list of suppliers, contract/services negotiation and execution (supplier selection process).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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